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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN COPELAND,

Defendant and Appellant.

C094653

(Super. Ct. No. 21FE003668)

Defendant Ryan Copeland appeals the upper term sentence imposed following his conviction for unlawful taking of a vehicle. Defendant contends recently enacted changes to Penal Code section 1170, effective January 1, 2022, necessitate a remand for resentencing because the changes limit the trial court's discretion to impose the upper term.¹ The People agree. We remand for resentencing.

¹ Undesignated statutory references are to the Penal Code.

I. BACKGROUND

Defendant led law enforcement officers on a high-speed chase in a stolen vehicle and then resisted arrest after he left the vehicle. The jury found defendant guilty of reckless evasion (Veh. Code, § 2800.2, subd. (a)—count 1), unlawful taking or driving a vehicle (Veh. Code, § 10851, subd. (a)—count 2), and misdemeanor resisting arrest (§ 148, subd. (a)(1)—count 3).

On August 17, 2021, the trial court sentenced defendant to four years (upper term) for vehicle theft (count 2), eight months (one-third consecutive) for evasion (count 1), and a concurrent term of one year for resisting arrest (count 3). The probation officer submitted a report before sentencing recommending a middle term of three years for the vehicle theft charge. At the sentencing, the trial court acknowledged defendant's counsel presented "a very compelling and sad story about [defendant], and I am very sorry for the circumstances under which he was raised," but explained it imposed the upper term because "the factors in aggravation far outweigh[] any factors in mitigation." The court emphasized the dangerousness of the chase, noting: "[T]he pursuing officer's vehicle lost sight of the defendant and had to rely upon the helicopter," in the video of the chase the court noticed "there were a number of cars on the freeway at that time," and defendant drove "for quite a while" compared to the "number of these types of cases" the court had seen. The trial court also commented that defendant had been engaged "in a crime spree here in Sacramento County for the last couple years," and defendant "was on probation for two felony offenses, similar to that which was charged in this case."

II. DISCUSSION

Defendant argues Senate Bill No. 567 (2021-2022 Reg. Sess.) (Stats. 2021, ch. 731, § 1.3) and Assembly Bill No. 124 (2021-2022 Reg. Sess.) (Stats. 2021, ch. 695, § 5) both implemented ameliorative changes to section 1170, subdivision (b), and apply retroactively to defendant. He seeks a reversal and remand for the trial court to apply the modified analysis. The People agree remand is necessary.

At the time of defendant's sentencing, section 1170 permitted trial courts to select the appropriate term "within the sound discretion of the court" and "may consider the record in the case, the probation officer's report," and other reports. (Former § 1170, subd. (b).) On January 1, 2022, while this appeal was pending, several changes to section 1170 became effective. (Stats. 2021, ch. 731, § 1.3.) Relevant here, trial courts may now impose "a sentence not to exceed the middle term," (§ 1170, subd. (b)(1)) and may only impose an upper term if there are aggravating circumstances based on facts either "stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial" (§ 1170, subd. (b)(2)). Trial courts also must now impose the lower term, unless contrary to the interests of justice, if certain circumstances were a contributing factor in the commission of the offense, including the defendant "has experienced psychological, physical, or childhood trauma." (§ 1170, subd. (b)(6)(A).) These ameliorative changes to section 1170 apply retroactively to defendant's nonfinal conviction. (*People v. Garcia* (2022) 76 Cal.App.5th 887, 902; *People v. Flores* (2022) 73 Cal.App.5th 1032, 1039.)

The trial court here relied on, among other considerations, the dangerousness of defendant's flight from law enforcement to impose the upper term. This analysis involved many facts not necessarily found true by the jury in defendant's case, nor is there evidence defendant stipulated to these facts. The trial court also had more discretion under section 1170 to impose the upper term at the time of sentencing than it does now, and it may now be required to impose the lower term if any of the statutorily provided circumstances were a contributing factor in the offense. Accordingly, the upper term sentence on the reckless evasion conviction (count 2) must be vacated and the case remanded for a new sentencing hearing. On remand, the trial court may revisit all of its sentencing choices in light of the new legislation. (*People v. Garcia, supra*, 76 Cal.App.5th at p. 903; *People v. Buycks* (2018) 5 Cal.5th 857, 893 ["when part of a

sentence is stricken on review, on remand for resentencing ‘a full resentencing as to all counts is appropriate’ ”].)

III. DISPOSITION

We remand the matter for resentencing under section 1170, as amended. In all other aspects, the judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

HULL, Acting P. J.

/S/

DUARTE, J.